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OFFICE OF PETITIONS

In re Application of
Whitsett, et al.
Application No. 10/772,716
Filed: February 5, 2004
Attorney Docket No. 10872.0517745
For: DIAGNOSIS, PROGNOSIS AND
TREATMENT OF PULMONARY
DISEASES

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: DECISION GRANTING
: PETITION
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This is a decision on the petition filed June 9, 2004, requesting in effect, withdrawal of the Notice of Incomplete Nonprovisional Application, mailed April 9, 2004, and accordation of a February 5, 2004 filing date to the above-identified application.

The application was deposited on February 5, 2004. On April 9, 2004, the Office of Initial Patent Examination mailed a Notice informing petitioners that no filing date had been accorded to the application papers deposited on February 5, 2004 because no drawing was present, as is required by 35 USC 113, despite the fact that several drawings were referenced in the specification.

In response to the Notice, petitioners timely filed the present petition arguing that drawings are not necessary for the understanding of the invention and that the application should be accorded a filing date of February 5, 2004 without drawings present.

It is noted that the above-identified application contains method claims. As stated in MPEP 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence.)

MPEP 601.01(f) also states that:

A non provisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figures in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims. Therefore, the above-identified application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g).

MPEP 601.01(g) states that if an application is filed without all of the drawing figures referred to in the specification, a "Notice of Omitted Items" is mailed indicating that the application has been accorded a filing date.

In view of the above, the "Notice" mailed April 9, 2004 was mailed in error and is hereby withdrawn. The petition is **granted**. No petition fee has been or will be charged in connection with this matter.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of **February 5, 2004**.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6712.

A handwritten signature in cursive script, appearing to read "E. Shirene Willis".

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy